

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 98-0057 (PLF)
)	
MARIA HSIA,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION AND ORDER

The Court has before it defendant's motion for a new trial, the government's opposition and defendant's reply. The Court heard oral argument from counsel on the motion on August 10, 2000. Upon consideration of the briefs and arguments of counsel, as well as the entire record in this case, the Court denies defendant's motion for a new trial.

I. STANDARD

"On a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require." Rule 33, Fed. R. Crim. P. "Any error of sufficient magnitude to require reversal on appeal is an adequate ground for requiring a new trial." 3 CHARLES ALAN WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 556 (2d ed. 1982 & Supp. 2000); see also United States v. Dale, 991 F.2d 819, 838 (D.C. Cir.), *cert. denied*, 510 U.S. 1030 (1993). In considering a motion for a new trial based on the weight of the evidence, the Court "weighs the evidence and evaluates the witnesses' credibility and decides whether 'a serious miscarriage of justice may have occurred.'" United States v. Dale, 991 F.2d at 838 (quoting United States v. Rogers, 918 F.2d 207, 213 (D.C.

Cir. 1990)); see United States v. Neill, 964 F. Supp. 438, 441 (D.D.C. 1997). While the defendant contends that each ground offered in support of her motion, taken separately, is sufficient to warrant a new trial, the Court must also consider the cumulative effect of the asserted errors. See United States v. Williams, 81 F.3d 1434, 1443-44 (7th Cir. 1996) (“It is the total impact of all the irregularities at trial, rather than the impact of each one examined in isolation, that determines whether a defendant is entitled to a new trial.”); United States v. Parker, 997 F.2d 219, 221 (6th Cir. 1993) (same). In the end, whether to grant a motion for a new trial is “a decision committed to the Court’s sound discretion.” United States v. Neill, 964 F. Supp. at 441.

II. DISCUSSION

Defendant Maria Hsia was convicted on five counts of willfully causing false statements to be made to the Federal Election Commission, in violation of 18 U.S.C. § 2(b) and 18 U.S.C. § 1001. Ms. Hsia contends that because the convictions on all five counts were unsupported by fact or law, she should be granted a new trial under Rule 33 of the Federal Rules of Criminal Procedure. She points to five specific reasons why “the interests of justice” require a new trial:

1. Although the government charged Ms. Hsia with five counts of willfully causing false statements to be made to the FEC in violation of 18 U.S.C. §§ 2(b) and 1001, no evidence was introduced of any statement ever having been made, let alone one that was false or one that Ms. Hsia knew was false or that she caused to be made. Rather, the Court permitted the government to prove a case of concealment and/or conspiracy and/or a blended or “hybrid” charge of causing a false statement by concealment, even though the indictment did not charge concealment and the government had dismissed the conspiracy count before trial. The Court improperly permitted the government to

pursue its concealment theory, thereby confusing the jury and surprising the defendant and forcing her to defend against an uncharged offense. The Court should have granted the defendant's motion for a mistrial after the government announced its new concealment theory in its opening statement.

2. The Court made several erroneous, prejudicial and (in some cases) unreasonably delayed evidentiary rulings, including: (a) the admission of several checks related to Counts 3 and 4 that were irrelevant, lacked foundation, constituted hearsay and violated Ms. Hsia's Sixth Amendment right to confront witnesses against her; (b) the admission of prior bad acts evidence in contravention of Rule 404(b) of the Federal Rules of Evidence (the March Fong Eu and Don Knabe evidence); and (c) the initial admission of certain hearsay testimony by Matthew Gorman, which was belatedly excluded and stricken after the harm had been done, in combination with the admission through Mr. Gorman of certain checks without foundation or authentication.

3. The Court committed error by denying Ms. Hsia's motion to sever Counts 3 and 4 after it reserved ruling on her motion for judgment of acquittal as to those two counts, which in turn effectively precluded her from testifying in her own defense with respect to the facts underlying the other three counts.

4. Several of the Court's jury instructions were erroneous as a matter of law, particularly those that supported the government's concealment theory and the one that was based on the court of appeals' opinion in United States v. Hsia, 176 F.3d 517 (D.C. Cir. 1999), *cert. denied*, 120 S. Ct. 978 (2000).

5. The Court made several other critical errors, including allowing the trial to go forward despite substantial prejudicial publicity that tainted the jury and made a fair trial impossible,

concealing the fact that the Court was under investigation for judicial bias in this case, and exhibiting hostility towards defense counsel which prejudiced Ms. Hsia.

As the government points out in its opposition to the defendant's motion, Ms. Hsia has not proffered any new evidence that would warrant a new trial, nor has she asserted that the testimony of any particular witness was so undeserving of credence that any of the facts established in the government's case are so suspect that they undermine confidence in the jury's verdict. Nor, in the Court's view, is the verdict against the weight of the evidence. The question on this motion therefore is whether any of the specific issues raised by the defendant, separately or in combination, justify the grant of a new trial "in the interests of justice."

This was a hard-fought and contentious case involving complicated facts, presented in part through the testimony of non-English speaking witnesses, a great deal of documentary evidence, and complex and novel legal questions presented by the parties in voluminous filings before, during and after trial. The Court expressed its view in advance of trial that the government's theory of prosecution — that Ms. Hsia solicited contributions from others and engaged in other conduct that led political committees to list as true contributors in their reports to the FEC persons who were not the true contributors and who Ms. Hsia knew were not the true contributors, thereby causing the making of false statements to the FEC by the political committees — was a theory difficult enough for a court to understand, let alone a jury. In the Court's opinion, it required an "Alice-in-Wonderland-like maze of logical leaps and tangled inferences At every turn, one encounters another place where the government's theory defies logic and stretches almost beyond recognition the two criminal statutes on which it relies." United States v. Hsia, 24 F. Supp. 2d 33, 54 (D.D.C. 1998). But the court of appeals

disagreed; it found “no material novelty in the government’s reading of the statutes” and concluded that the indictment and bill of particulars “straightforwardly lay out the government’s account” of the “affirmative steps” Ms. Hsia allegedly took through the use of conduit contributors to “cause” the political committees to make false statements in their reports to the FEC. United States v. Hsia, 176 F.3d at 522-23.

While Ms. Hsia now argues at every opportunity that the court of appeals’ “analysis was flawed,” that the court of appeals was “confused,” and that it “misconstrued the charged conduct in this case,” see Def.’s Motion at 7, 14-16; Def.’s Reply at 2-4, this Court was and is bound by the court of appeals’ decision. This Court tried throughout this case properly to apply the court of appeals’ reading of the relevant statutes and regulations and to permit both sides to present their case to the jury fairly in the context of the Hsia decision. In the end, it was for the jury, upon proper instructions — including ones based on Hsia — to decide whether the government had proven its case beyond a reasonable doubt on the theory set forth in the indictment and approved by the court of appeals in Hsia.

Virtually every argument now made by Ms. Hsia has been exhaustively briefed and argued before and decided by the Court either in a written opinion or orally before or during trial. Others are discussed in a separate opinion issued today denying her motion for judgment of acquittal or arrest of judgment. The Court has attempted to fairly decide each motion, to rule on each objection and evidentiary issue during trial, and to fashion jury instructions in accordance with the law and applicable precedent. The Court sees no reason to discuss each of defendant’s arguments yet again in denying her motion for a new trial. The Court’s rulings may be found in the record in this case and undoubtedly will be exhaustively challenged again on appeal. If the Court has erred, the court of

appeals will reverse Ms. Hsia's convictions.

There are three matters that do merit separate comment. First, the Court denied the motion to sever Counts 3 and 4 from the other three counts on the ground that Rule 12 of the Federal Rules of Criminal Procedure requires that a motion to sever be made before trial and permits a mid-trial severance only if the issue was initially raised pre-trial; otherwise, it is waived. See Rule 12(b)(5), 12(f), Fed. R. Crim. P.; United States v. Moore, 104 F.3d 377, 383 (D.C. Cir. 1997). If Ms. Hsia had sought severance before trial and then renewed her request, the Court then would have had to consider the continuing viability of the D.C. Circuit's decision in Cross v. United States, 335 F.2d 987, 989 (D.C. Cir. 1964) ("[p]rejudice may develop when an accused wishes to testify on one but not the other of two joined offenses which are clearly distinct in time, place and evidence"), and its proper application in this case, but the Court never reached that issue. See Trial Transcript ("Tr.") at 2236-41.

Second, the defendant argues that she was substantially prejudiced by "this Court's failure to advise the parties that it was under investigation for judicial bias in this case for the duration of the trial," Def.'s Motion at 38, and that columns by William Safire "alluding to the possibility of an investigation" regarding potential bias by the Court were particularly troubling. Id. at 38-39 ("It is impossible to know to what extent this investigation, or articles such as these, and the Court's knowledge thereof, influenced its rulings and behavior in this case."). First, the Court notes that during trial defense counsel stated on the record more than once that she had read the Safire columns and "will put on the record that we do not dispute the Court's ability to be fair and impartial in this matter." Tr. at 729-30; see also Tr. at 1585-86. Second, the fact is — as defense counsel knows — this Court

was not under investigation for judicial bias in this case. The complaint to which she alludes was not lodged against the undersigned, but against the Chief Judge with respect to her decision to specially assign certain cases, including this one, a prerogative specifically provided for in the Rules of this Court that had been in force for nearly 30 years. The Court does not understand why defendant's counsel persists in misstating the facts with respect to this matter. See also Memorandum Opinion and Order of Dec. 18, 2000 (denying defendant's motion for recusal of the undersigned).

Finally, the Court must take issue with the contention that it exhibited "hostile behavior towards defense counsel, Nancy Luque, which further prejudiced Ms. Hsia with the jury." Def.'s Motion at 39. To be sure, the Court found it necessary to admonish counsel for both sides during the trial, as might be expected in such a contentious trial. The Court sometimes interrupted Ms. Luque when she went too far afield or asked incomprehensible questions and sometimes attempted to suggest the proper way to frame or rephrase a question to avoid confusing the jury. Despite Ms. Luque's experience at the bar, she sometimes did not ask questions with precision and seemed occasionally to lose perspective and let her emotions overtake her judgment in the defense of her client, but the Court exhibited no hostility or bias towards either her or Ms. Hsia. It simply attempted to do what trial courts are charged with doing — managing and controlling the conduct of trials and the orderly interrogation of witnesses and presentation of evidence. See Rule 611, Fed. R. Evid.; United States v. Edmond, 52 F.3d 1080, 1101-02 (D.C. Cir.), *cert. denied*, 516 U.S. 998 (1995).¹

¹ The Court also instructed the jury several times that the Court's statements, comments or actions with respect to counsels' conduct or objections were not intended to indicate, intimate or hint as to how the jury should decide the case and that they should not be held against counsel or their clients. See, e.g., Tr. at 40, 462-63, 2479-81.

For all of these reasons and for those expressed in prior written and oral decisions of this Court, it is hereby

ORDERED that defendant's Motion for a New Trial [393-1] is DENIED.

SO ORDERED.

PAUL L. FRIEDMAN
United States District Judge

DATE: